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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH ANTHONY WILLIAMS,

Defendant and Appellant.

B234652

(Los Angeles County
Super. Ct. No. KA091711)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Robert M. Martinez, Judge. Affirmed.

California Appellate Project and Suzan E. Hier, under appointment by the Court
of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Joseph Anthony Williams appeals from the judgment entered following his pleas of no contest to two counts of second degree robbery (Pen. Code, § 211),¹ during one of which he personally used a firearm (§ 12022.53, subd. (b)), and receiving stolen property (§ 496, subd. (a)). In addition, Williams admitted previously having been convicted of first degree burglary (§ 459) within the meaning of section 667, subdivision (a)(1) and the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). The trial court sentenced Williams to 19 years in prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Facts.

At approximately 5:45 a.m. on August 15, 2010, Gurvinder Singh was working at a 7-Eleven store located on East Arrow Highway in the City of Covina. A man carrying a “book bag” came into the store and attempted to buy something. When Singh asked him for the money, a second man, who was wearing a mask which covered his face below his nose, and a hooded sweatshirt with the hood pulled up to the top of his forehead, entered the store. The man in the sweatshirt pointed a gun at Singh and told Singh to “ ‘give [him] the money.’ ” Singh, who was “afraid,” allowed the man with the bag to go behind the counter and open the register. The man with the gun continued to point it at Singh while he told the man with the bag to “ ‘hurry up. Hurry up.’ ” The man with the bag took all the cash and all the “scratchers” lottery tickets from the drawer. After he placed the money and the tickets in the book bag, he came out from behind the counter and the two men left the store. Singh called the police at approximately 5:50 a.m., just two or three minutes after the men had left.

Singh was later shown a “six-pack,” or group of six photographs, from which he chose a picture of one man and indicated that he “look[ed] like” the man who had pointed the gun at him. Singh was not, however, sure of the identification.

At approximately 6:00 a.m. on Sunday, August 15, 2010, Frank E. Bailey, III, was working at the Shell gas station at 705 West Huntington in the City of Monrovia. That

¹ All further statutory references are to the Penal Code unless otherwise indicated.

morning, people were coming into the station to collect cash they had won on lottery tickets. Bailey knew what time any given individual had come to collect their winnings because there is a “time stamp,” or print that indicates the time of day, on the station’s video recording system. Bailey ran customers’ lottery tickets through the station’s “Lotto machine” scanner as they came in. After viewing a photo taken by the station’s surveillance camera, Bailey identified Williams as one of the individuals who had come into the station with lottery tickets that morning.

Sonny Stark is an officer for the California State Lottery Law Enforcement Division. In his 11 and 1-half years as a State Lottery officer, Stark had been trained to “spot tickets that [had been] tampered with [and to] trace tickets that [were] computer generated [or] stolen” Based on a bar code on the ticket, Stark could determine whether the ticket had been properly scanned, or activated, before it was purchased. Legitimate sellers of lottery tickets “activate the pack and then . . . [sell the tickets] to . . . customer[s].” The scanning of the ticket also allows someone like Stark to “track where the ticket . . . originated before it was cashed.” Stark was able to determine that the tickets presented for payment by Williams on the morning of August 15, 2010 had been taken from the Shell station on West Huntington in Monrovia and the 7-Eleven store on Arrow Highway in Covina. Williams presented a total of 17 tickets worth \$38 at approximately 6:09 a.m. Several more tickets were scanned at 8:04 a.m.

Los Angeles County Sheriff’s Department Detective Nicholas Cannis is assigned to the major crimes bureau. At the time of Williams’s preliminary hearing, Cannis had been a law enforcement officer for 22 years. In August 2010, Cannis was assigned to investigate the theft from the 7-Eleven store on East Arrow Highway. The detective also did “follow” up at Jay’s Shell Station on West Huntington. Cannis spoke with Singh, reviewed the video tape of the theft from his store and looked at the “six-pack” of photographs viewed by Singh when he identified the individuals who had robbed him. When he was shown the six-pack, Singh again tentatively identified Williams. Singh’s comment to Cannis at the time was that “because of the mask, he couldn’t be 100% [certain,] but it looked . . . like the suspect to him at that time.” When shown the video

tape, Singh again identified Williams. Singh said that Williams's "face above the banda[na], which would be from the nose up, actually, the whole nose is exposed, . . . looked similar to him, to the suspect" with the gun.

After viewing the video tape of the crime, Cannis believed that the gun used by Williams was a revolver. Cannis indicated that, "on a revolver, there's a barrel that goes around right above the trigger and then the . . . cylinder where the bullets are held ends right [at the] . . . long, skinnier portion of [the gun] [A] [s]emiautomatic would be a bulky size the whole way across the top of [the] weapon."

Cannis indicated that it was 11 miles from the 7-Eleven store on Arrow Highway in Covina to the Shell Station in Monrovia. Depending upon traffic conditions, Cannis was of the opinion that it would take between 10 and 15 minutes to drive from the store to the station.

When Cannis later spoke to Williams, Williams said that he was the one who had presented the lottery tickets for cash. Williams told Cannis that he had gotten the tickets from some fellow gang members. Williams claimed that he had been at a friend's home in Monrovia when two individuals who had obtained lottery tickets while robbing a 7-Eleven store offered him money to cash the tickets for them. Williams agreed and went with the two men to the gas station.

During the early morning hours of August 23, 2010, Melad Nakhla was working at the Foothill Shell Gas Station located at 2510 Foothill Boulevard. At approximately 1:30 a.m., "two guys" entered the gas station's store. One of the men, Williams, asked to purchase \$1 worth of candy and, when Nakhla opened the cash drawer to place the dollar inside, the other man, Williams's cohort, pulled out a gun, and ordered Nakhla to " 'give [him] all the money.' " When he believed that Nakhla was moving too slowly, Williams's accomplice "stuck" Nakhla with the gun. Nakhla, who was "scared," moved faster and, when he had emptied the drawer, the two men took the cash, left the store, got into a green car and drove off. In all, the men took approximately \$150. As the men pulled out of the station, Nakhla called the police.

Michael Scranton is a detective with the City of La Verne Police Department and was the detective assigned to investigate the August 23, 2010 robbery of the Shell gas station. Scranton spoke with Officer Corporal Dinkle, who had arrested Williams “in relation to [the] robbery.” Williams had been taken into custody a “few minutes after the robbery occurred[,]” less than one mile from the gas station. He was the driver of the vehicle in which the officer found a brown book bag and a blue bandana.

After reviewing a video tape of the crime, Scranton concluded that Williams’s accomplice used a revolver during the robbery. Scranton could tell it was a revolver because it held “the ammunition in a circular motion around the barrel.”

After advising him of his rights pursuant to *Miranda*,² Scranton interviewed Williams. Williams initially told Scranton that “he had gone to the Shell gas station located [on] Foothill to meet a girl and that, while he was waiting for [her] to arrive, [his codefendant, Walls,] approached him with a gun and ordered him into the store.” In contrast, on the video tape of the robbery, Scranton had seen Williams enter the store with Walls following behind. “Mr. Williams approached the cashier with what appeared to be candy [and] very calmly went to purchase the candy with money. . . . [A]t that point, Mr. Walls walked up behind Mr. Williams [and] point[ed] a revolver at the cashier.” Scranton continued: “[A]fter the robbery occur[red], [the two men] walk[ed] out of the store calmly together.”

When Scranton informed Williams that there was a video tape of the robbery and that it did not show Walls forcing him to enter the store at gunpoint, Williams changed his story. He indicated that Walls had told him he needed money and that his plan was to rob the store at the gas station. The two men would approach the register with some candy and when the cashier opened the register to take their money, Walls would, while pointing a gun at the cashier, reach around and take the money from the open cash drawer. However, when the two men approached the cash register, Williams saw the monitor behind the counter and he whispered to Walls that they should not go through

² *Miranda v. Arizona* (1966) 384 U.S. 436.

with the plan. Walls, however, chose to continue. When he was later shown the video tape of the robbery, Williams identified himself and Walls.

2. Procedural history.

Following a preliminary hearing, on December 9, 2010, Williams was charged by information with two counts of second degree robbery (§ 211), during one of which a principal was armed with a firearm (§ 12022, subd. (a)(1)) (count 1) and during one of which he personally used a firearm (§ 12022.53, subd. (b)) (count 2), and receiving stolen property (§ 496, subd. (a)) (count 3). It was further alleged as to counts 1, 2 and 3 that, pursuant to sections 667, subdivisions (b) to (i) and 1170.12, subdivisions (a) to (d), the Three Strikes law, Williams had suffered a conviction for first degree burglary (§ 459) in November 2007. It was alleged with regard to counts 1 and 2 that Williams had been convicted of the serious felony of first degree burglary (§ 459) within the meaning of section 667, subdivision (a)(1). Finally, it was alleged as to count 1 that Williams suffered a prior conviction for first degree burglary in November 2007 for which he served a prison term within the meaning of section 667.5, subdivision (b).

On May 26, 2011, Williams entered into a negotiated plea agreement under the terms of which he would plead guilty or no contest to count 2 (second degree robbery) and count 3 (receiving stolen property). In addition, he would admit the allegations that he personally used a firearm during the commission of the robbery and had previously been convicted of a serious felony, residential burglary, within the meaning of section 667, subdivision (a)(1) and the Three Strikes law. In exchange for Williams's plea, the trial court would dismiss count 1 and the prison term alleged in conjunction with that count, and sentence Williams to 19 years in prison.

After waiving his right to a jury trial, his right to confront and cross-examine the witnesses against him, the right to "produce evidence and present a defense" and his right to remain silent, Williams pled no contest to second degree robbery as alleged in count 2 of the information and receiving stolen property as alleged in count 3. Williams then admitted that, during the robbery, he personally used a firearm and that, on November 16, 2007, he suffered a conviction for the serious felony of first degree residential burglary

within the meaning of section 667, subdivision (a)(1) and the Three Strikes law.

Williams's counsel concurred in the pleas, stipulated that there was a factual basis for them and joined in Williams's admissions and waivers.

Based on Williams's September 22, 2010 probation officer's report and the "negotiated settlement," the trial court denied probation and imposed the low term of two years in prison for Williams's conviction of robbery. The court then doubled the term to four years pursuant to Williams's "admission of the special allegation pursuant to" the Three Strikes law. For Williams's personal use of a firearm during the robbery, the trial court imposed a 10-year, consecutive term. With regard to the allegation that Williams suffered a prior conviction of the serious felony of first degree burglary pursuant to section 667, subdivision (a), the trial court imposed a consecutive term of five years. Finally, for Williams's conviction of count 3, receiving stolen property, the trial court imposed a concurrent, mid-term of four years in prison. In total, the trial court sentenced Williams to 19 years in prison.³

Williams was granted presentence custody credit for 272 days actually served and 15 percent, or 41 days of conduct credit, for a total of 313 days.⁴ He was ordered to pay a \$200 restitution fine (§ 1202.4, subd. (b)), a stayed \$200 parole revocation restitution fine (§ 1202.45), a \$40 court security fee (§ 1465.8, subd. (a)(1)), a \$50 crime prevention charge (§ 1202.5), and an \$80 criminal conviction assessment (Gov. Code, § 70373).

Williams filed a timely notice of appeal on July 12, 2011. His request for a certificate of probable cause was denied on July 19, 2011.

³ In view of Williams's plea, the trial court granted the People's motion to dismiss the robbery charge in count 1 and the prior prison term alleged with regard to that count. In doing so, the court stated: "On People's motion, count 1 is dismissed. Denial of probation and the selection of the various terms is all based on the negotiated settlement in this matter."

⁴ In her opening brief, appointed appellate counsel indicates that the trial court's award of actual days in custody was five days short. She states that "[t]he error was corrected by a motion in the trial court to reflect an award of 277 days of actual credits and a total of 318 days."

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed November 18, 2011, the clerk of this court advised Williams to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.